

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent &amp; Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
filed in the U.S. District Court Northern District of California on the following    ☒ Patents or    ☐ Trademarks:

DOCKET NO. CV 10-05106 PVT	DATE FILED 11/10/2010	U.S. DISTRICT COURT 280 South First Street, Rm 2112, San Jose, CA 95113
PLAINTIFF EBAY INC		DEFENDANT PARTSRIVER INC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 <b>6,275,821</b>		<b>SEE ATTACHED COMPLAINT</b>
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK  Richard W. Wiekling	(BY) DEPUTY CLERK  Betty Walton	DATE  November 16, 2010
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1 Target Corporation; OfficeMax Incorporated; ShopKo Stores Operating Co., LLC; Briggs & Stratton  
2 Corporation; Chelsea & Scott, Ltd., d/b/a One Step Ahead & Leaps And Bounds; National Business  
3 Furniture, LLC' BuyOnlineNow, Inc.; Rockler Companies, Inc.; IDW, LLC, d/b/a ID Wholesaler; 1-  
4 800-Flowers.com, Inc.; PC Connection, Inc.; Eastbay, Inc.; and Mason Companies, Inc., d/b/a  
5 Maryland Square.

6 57. Kelora included the following allegation in its complaint in the Western District of  
7 Wisconsin: "Kelora is the owner by assignment of all right, title and interest in U.S. Patent No.  
8 6,275,821 ('821 patent'), entitled, 'Method and system for executing a guided parametric search,'  
9 which was duly and properly issued by the U.S. Patent & Trademark Office on August 14, 2001."

10 58. Kelora included the following allegation in its complaint in the Western District of  
11 Wisconsin: "Defendants, and each of them, have infringed and continue to infringe the '821 patent  
12 by, inter alia, making and using parametric search systems, including web-based parametric search  
13 systems, and performing parametric searches that infringe the '821 patent."

14 59. The complaint filed by Kelora in the Western District of Wisconsin lists Manatt,  
15 Phelps & Phillips, LLP as attorneys for Kelora in that action.

16 60. Based on the foregoing, there is a substantial controversy between (i) PartsRiver  
17 and/or Kelora and (ii) eBay, of sufficient immediacy and reality, to warrant the issuance of a  
18 declaratory judgment with respect to non-infringement, invalidity, and/or intervening rights with  
19 respect to at least reexamined claims 1 and 2 of the '821 patent.

20 **COUNT I**

21 **DECLARATORY JUDGMENT OF NONINFRINGEMENT**

22 61. eBay repeats and incorporate by reference the allegations of paragraphs 1-60 in their  
23 entirety.

24 62. eBay has not infringed, and is not now infringing, at least reexamined claims 1 and 2  
25 of the '821 patent.

26 **COUNT II**

27 **DECLARATORY JUDGMENT OF INVALIDITY**

63. eBay repeats repeat and incorporate by reference the allegations of paragraphs 1–60 in their entirety.

64. At least reexamined claims 1 and 2 of the '821 patent are invalid.

**COUNT III**

**DECLARATORY JUDGMENT OF INTERVENING RIGHTS**

65. eBay repeats repeat and incorporate by reference the allegations of paragraphs 1–60 in their entirety.

66. The scope of reexamined claim 1 of the '821 patent is not legally identical to the scope of any original claim of the '821 patent.

67. The scope of reexamined claim 2 of the '821 patent is not legally identical to the scope of any original claim of the '821 patent.

68. Under 35 U.S.C. § 252, ¶ 1 & § 307(b), PartsRiver may not bring an action against eBay for causes arising before November 2, 2010, with respect to at least reexamined claims 1 and 2 of the '821 patent.

69. Under 35 U.S.C. § 252, ¶ 1 & § 307(b), Kelora may not bring an action against eBay for causes arising before November 2, 2010, with respect to at least reexamined claims 1 and 2 of the '821 patent.

70. Under 35 U.S.C. § 252, ¶ 2 & § 307(b), eBay is entitled to absolute intervening rights with respect to at least reexamined claims 1 and 2 of the '821 patent.

71. Under 35 U.S.C. § 252, ¶ 2 & § 307(b), eBay is entitled to equitable intervening rights for the protection of investments made or business commenced before November 2, 2010, with respect to at least claims 1 and 2 of the '821 patent.

**PRAYER FOR RELIEF**

**WHEREFORE**, eBay prays for the following relief:

A. A declaration that eBay has not infringed and is not infringing at least reexamined claims 1 and 2 of the '821 patent;

B. A declaration that at least reexamined claims 1 and 2 of the '821 patent are invalid;

1 C. A declaration that PartsRiver may not bring an action against eBay for causes  
2 arising before November 2, 2010, with respect to at least reexamined claims 1 and 2 of the '821  
3 patent;

4 D. A declaration that Kelora may not bring an action against eBay for causes  
5 arising before November 2, 2010, with respect to at least reexamined claims 1 and 2 of the '821  
6 patent;

7 E. A declaration that eBay is entitled to absolute intervening rights with respect  
8 to at least reexamined claims 1 and 2 of the '821 patent;

9 F. A declaration that eBay is entitled to equitable intervening rights with respect  
10 to at least reexamined claims 1 and 2 of the '821 patent;

11 G. An order declaring that eBay is a prevailing party and that this is an  
12 exceptional case, awarding eBay its costs, expenses, disbursements, and reasonable attorneys' fees  
13 under 35 U.S.C. § 285 and all other applicable statutes, rules, and common law;

14 H. That PartsRiver and/or Kelora be ordered to pay all costs associated with this  
15 action; and

16 I. That eBay be granted such other and additional relief as the Court deems just  
17 and proper  
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1  
2 Dated: November 10, 2010

By: 

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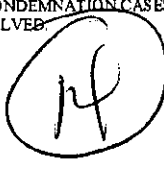
26 <SF-PartsRiver-MS-eBay@sidley.com>

27 *Counsel for Plaintiff eBay Inc.*  
28

JS 44 (Rev. 12/07) (CAND Rev 1/10)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> eBay, Inc.	<b>DEFENDANTS</b> PartsRiver, Inc. and Kelora Systems, LLC
<b>(b) County of Residence of First Listed Plaintiff</b> (EXCEPT IN U.S. PLAINTIFF CASES)	<b>County of Residence of First Listed Defendant</b> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED
<b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> see attachment	<b>Attorneys (If Known)</b> <div style="text-align: center; font-size: 2em;">  </div> <div style="text-align: right; font-size: 1.5em; margin-top: 10px;">         105106 PVT       </div>

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)												
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width:100%;"> <tr> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> </tr> <tr> <td>Citizen of This State <input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State <input type="checkbox"/> 1</td> <td>Citizen of Another State <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 2</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3</td> <td>Foreign Nation <input type="checkbox"/> 3</td> <td></td> <td></td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State <input type="checkbox"/> 1	Citizen of Another State <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 2	Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 3		
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Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 3												

IV. NATURE OF SUIT (Place an "X" in One Box Only)																								
<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>TORTS</b> <table style="width:100%;"> <tr> <th style="text-align: left;">PERSONAL INJURY</th> <th style="text-align: left;">PERSONAL INJURY</th> </tr> <tr> <td><input type="checkbox"/> 310 Airplane</td> <td><input type="checkbox"/> 362 Personal Injury—Med. Malpractice</td> </tr> <tr> <td><input type="checkbox"/> 315 Airplane Product Liability</td> <td><input type="checkbox"/> 365 Personal Injury—Product Liability</td> </tr> <tr> <td><input type="checkbox"/> 320 Assault, Libel &amp; Slander</td> <td><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</td> </tr> <tr> <td><input type="checkbox"/> 330 Federal Employers' Liability</td> <td><b>PERSONAL PROPERTY</b></td> </tr> <tr> <td><input type="checkbox"/> 340 Marine</td> <td><input type="checkbox"/> 370 Other Fraud</td> </tr> <tr> <td><input type="checkbox"/> 345 Marine Product Liability</td> <td><input type="checkbox"/> 371 Truth in Lending</td> </tr> <tr> <td><input type="checkbox"/> 350 Motor Vehicle</td> <td><input type="checkbox"/> 380 Other Personal Property Damage</td> </tr> <tr> <td><input type="checkbox"/> 355 Motor Vehicle Product Liability</td> <td><input type="checkbox"/> 385 Property Damage Liability</td> </tr> <tr> <td><input type="checkbox"/> 360 Other Personal Injury</td> <td></td> </tr> </table>	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. 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Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyright <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HRA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 865 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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<input type="checkbox"/> 360 Other Personal Injury																								


<b>V. ORIGIN</b> (Place an "X" in One Box Only)	Transferred from
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Judge from Magistrate Judgment

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 2201 and 2202, and 35 U.S.C. §§ 101, et seq.
	Brief description of cause: Complaint for Declaratory Judgment of Patent Noninfringement and Invalidity

<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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<b>VIII. RELATED CASE(S) IF ANY</b>	PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE". PartsRiver, Inc. v. Shopzilla, Inc. et al., 4:09-cv-00811-CW, Judge Claudia Wilken
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<b>IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)</b>	<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND <input type="checkbox"/> SAN JOSE <input type="checkbox"/> EUREKA
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DATE November 10, 2010	SIGNATURE OF ATTORNEY OF RECORD 
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JS 44 Reverse (Rev. 12/07)

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**Attachment to Civil Cover Sheet**

**For Plaintiff eBay Inc.:**

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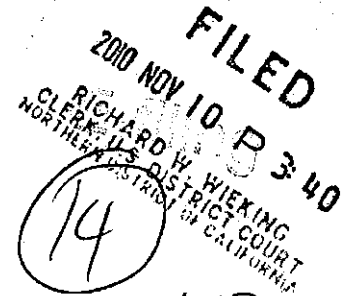


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7 *Counsel for Plaintiff eBay Inc.*

8 NOTE: Additional counsel listed on signature page

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA



PVT

11 CV10 5106

12  
13 eBay Inc.,

14 *Plaintiff,*

15 vs.

16 PartsRiver, Inc. and Kelora Systems, LLC,

17 *Defendants.*

Case No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
JUDGMENT

DEMAND FOR JURY TRIAL

Date: November 10, 2010

1 Plaintiff eBay Inc. alleges as follows:

2 **THE PARTIES**

3 1. Plaintiff eBay Inc. ("eBay") is a Delaware corporation having its principal place of  
4 business at 2065 Hamilton Avenue, San Jose, CA 95125.

5 2. On information and belief, Defendant PartsRiver, Inc. ("PartsRiver") is a Delaware  
6 corporation having its principal place of business at 3155 Kearney Street, Suite 210, Fremont, CA  
7 94538.

8 3. On information and belief, Defendant Kelora Systems, LLC ("Kelora") is a Delaware  
9 limited liability company having its principal place of business at 19925 Stevens Creek Boulevard,  
10 Suite 100, Cupertino CA 95014.

11 **NATURE OF THE ACTION**

12 4. This is a declaratory judgment action seeking a determination that eBay does not  
13 infringe at least reexamined claims 1 and 2 of U.S. Patent No. 6,275,821 under 35 U.S.C. § 271; that  
14 at least reexamined claims 1 and 2 of this patent are invalid under at least 35 U.S.C. §§ 102, 103,  
15 112, and/or 305; and/or that eBay has intervening rights to at least reexamined claims 1 and 2 of this  
16 patent under 35 U.S.C. §§ 252 and 307(b).

17 **JURISDICTION AND VENUE**

18 5. On information and belief, this Court has personal jurisdiction over PartsRiver  
19 because PartsRiver is doing business in, and has its principal place of business in, this Judicial  
20 District at 3155 Kearney Street, Suite 210, Fremont, CA 94538.

21 6. On information and belief, this Court has personal jurisdiction over Kelora because  
22 Kelora is doing business in, and has its principal place of business in, this Judicial District at 19925  
23 Stevens Creek Boulevard, Suite 100, Cupertino CA 95014.

24 7. This Court has subject matter jurisdiction over eBay's causes of action asserted here  
25 pursuant to 28 U.S.C. § 1331 and 1338(a), because those claims arise under the patent laws of the  
26 United States, 35 U.S.C. §§ 101, *et seq.*, and under the Federal Declaratory Judgment Act, 28 U.S.C.  
27 §§ 2201 and 2202.

28 8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c).

**INTRADISTRICT ASSIGNMENT**

9. Pursuant to Civil Local Rule 3-2(c), this is an Intellectual Property Action that normally would be assigned on a district-wide basis. However, under Civil L.R. 3-12, this action is related to *PartsRiver, Inc., v. Shopzilla, Inc., et al.*, No. 4:09-cv-00811-CW ("the PartsRiver lawsuit") and thus should be assigned to Judge Wilken in the Oakland Division.

**FACTUAL BACKGROUND**

10. U.S. Patent No. 6,275,821 ("the '821 patent"), is entitled "Method and System for Executing a Guided Parametric Search," and originally issued August 14, 2001.

11. The '821 patent expires on October 14, 2014.

12. On information and belief, PartsRiver is and/or was the owner by assignment of the '821 patent.

13. On information and belief, Kelora is the owner by assignment of the '821 patent.

14. The first-named inventor of the '821 patent is Mohamed Sherif Danish ("Sherif Danish").

15. Sherif Danish lives in Cupertino, California.

16. Sherif Danish has referred to the '821 patent as the "Step Search" patent.

17. On information and belief, after PartsRiver acquired ownership of the '821 patent, Sherif Danish encouraged PartsRiver to enforce the '821 patent.

18. For example, in August 2006, Sherif Danish wrote to Horacio Woolcott, the CEO of PartsRiver:

Horacio,

As promised, here is a partial list of companies that infringe on the Step Search patent.

Sherif

[www.yahoo.com](http://www.yahoo.com)

[www.circuitcity.com](http://www.circuitcity.com)

[www.officedepot.com](http://www.officedepot.com)

<http://www.newark.com/>

<http://catalog.graybar.com/>

[bhinone.farnell.com/](http://bhinone.farnell.com/)

<http://www.gcs.com/>

19. In April 2007, Sherif Danish identified for PartsRiver the following companies as alleged "infringers" of the '821 patent:

<b>Portals</b>	
1)	Yahoo
2)	Amazon
3)	Ebay
4)	Google
5)	MSN
<b>Software Search Vendors</b>	
1)	Endeca Technologies
2)	Fast Search & Transfer
3)	IBM
4)	Autonomy
5)	Entopia
6)	Convera
7)	Microsoft
8)	Google
9)	Coveo
10)	dtSearch
11)	Dieselpoint
12)	Exalead
13)	InQulra
14)	Inxight Software
15)	ISYS Software
16)	Kaidara Software
17)	Knova Software
18)	Mercado
19)	Nervana
20)	Open Text
21)	Oracle
22)	PolySpot
23)	Progress Software
24)	Recommind

25) S. L. I. Systems	
26) Thunderstone	
27) Vivisimo	
28) WCC	
29) WebSide Story	
30) X1 Technologies	
31) ZyLab	
<b>Retailers</b>	
Best Buy	
Circuit City	
10000 Others	

20. On information and belief, pursuant to a consulting agreement effective August 1, 2007, Sherif Danish agreed to help PartsRiver enforce the '821 patent in exchange for \$10,000 per month for the term of the agreement, plus 10% of the first \$100 million received as a result of any licenses, settlements, or judgments involving the '821 patent.

21. On October 3, 2007, PartsRiver filed a civil action in the Eastern District of Texas (No. 2:07-cv-440-DF) alleging that the following companies infringe the '821 patent: Shopzilla, Inc.; ValueClick, Inc.; PriceRunner Limited; Yahoo!, Inc.; PriceGrabber.com, Inc.; eBay Inc.; and Microsoft Corporation.

22. Claim 2 of the '821 patent depends from claim 1.

23. On February 18, 2008, PartsRiver contended that the following websites are operated by eBay and utilize search processes or methods which infringe upon both claims 1 and 2 of the '821 patent:

www.shopping.com  
http://fr.shopping.com  
http://de.shopping.com  
http://uk.shopping.com  
http://au.shopping.com  
www.dealtime.com  
www.dealtime.com.uk  
www.ugenie.com

1 www.epinions.com

2 www.pricetool.com

3 www.express.ebay.com

4 24. On December 22, 2008, the United States Patent and Trademark Office ("USPTO")  
5 determined that there was a substantial new question of patentability affecting claims 1 and 2 of the  
6 '821 patent and thus ordered an *ex parte* reexamination of those claims (Reexamination Control No.  
7 90/009,316).

8 25. On January 30, 2009, the Court in the Eastern District of Texas determined that "the  
9 Northern District of California would clearly be a more convenient venue" and thus transferred  
10 PartsRiver's action to this Court, where it was assigned to Judge Wilken as Civil Action No. 4:09-  
11 cv-00811-CW.

12 26. On May 28, 2009, eBay, along with other defendants in that case, filed with Judge  
13 Wilken a motion for summary judgment of non-infringement and invalidity of claims 1 and 2 of the  
14 '821 patent.

15 27. On June 18, 2009, an Examiner at the USPTO issued an Office Action finally  
16 rejecting claims 1 and 2 of the '821 patent under 35 U.S.C. § 102(b) as being clearly anticipated by  
17 Granacki et al., *A Component Library Management System and Browser*, ISI Research Report,  
18 ISI/RR-93-386, USC/Information Sciences Institute, April, 1993.

19 28. On August 21, 2009, Judge Wilken granted summary judgment that claims 1 and 2 of  
20 the '821 patent were invalid under 35 U.S.C. § 102(b) due to the on-sale bar.

21 29. On September 18, 2009, PartsRiver appealed the Examiner's final rejection of claims  
22 1 and 2 to the Board of Patent Appeals and Interferences ("BPAI").

23 30. On September 18, 2009, PartsRiver appealed Judge Wilken's summary judgment of  
24 invalidity to the United States Court of Appeals for the Federal Circuit.

25 31. The notice of appeal that PartsRiver filed on September 18, 2009, was signed by the  
26 firm Manatt, Phelps & Phillips, LLP.

27 32. On January 29, 2010, PartsRiver filed a brief in the Federal Circuit arguing that Judge  
28 Wilken's summary judgment of invalidity should be reversed.

1 33. The brief that PartsRiver filed in the Federal Circuit was signed by Manatt, Phelps &  
2 Phillips, LLP.

3 34. On April 14, 2010, eBay, along with other defendants in that case, filed a brief in the  
4 Federal Circuit arguing that Judge Wilken's summary judgment of invalidity should be affirmed.

5 35. On May 20, 2010, while its appeal before the BPAI was pending, PartsRiver  
6 requested entry of an amendment to claim 1, as well as entry of a new claim 9. In its remarks  
7 accompanying the amendment, PartsRiver stated:

8 The amendment of claim 1 presented herein adjusts the claim language of  
9 claim 1 to correspond to that of allowed claim 9.<sup>11</sup> Claim 1 is now believed to  
10 reflect, albeit explicitly, the legal scope of claim 1 as previously issued. As such,  
11 although the text of claim 1 has been altered by amendment, the claim scope is  
legally identical to that of originally issued claim 1. This change in language has  
been adopted for the sole purpose of terminating the present reexamination to  
avoid lengthy appeal proceedings.

12 36. On June 24, 2010, the Examiner dismissed the appeal to the BPAI and issued a  
13 Notice of Intent to Issue Reexamination Certificate ("NIRC") stating that the amended claim 1 and  
14 the new claim 9 were allowable.

15 37. On June 29, 2010, the domain name "KELORA.COM" was registered.

16 38. Sherif Danish in Cupertino, California was listed as the "Technical Contact" and the  
17 "Administrative Contact" for "KELORA.COM."

18 39. The webpage at <http://www.kelora.com/> includes the following statement: "Kelora  
19 develops the most advanced product search technologies. Our patented, award winning Step Search  
20 ® technology is the industry norm for narrowing search results."

21 40. The webpage at [http://www.kelora.com/Contact\\_US.html](http://www.kelora.com/Contact_US.html) provides the following  
22 contact information:

23 Kelora Systems LLC  
24 19925 Stevens Creek Blvd #100  
Cupertino, CA 95014  
25 408-518-2055

26 41. On September 28, 2010, Kelora was formed as a Delaware limited liability company.

27 42. As of November 10, 2010, the assignment from PartsRiver to Kelora has not been  
28 made available to the public.

1           43.     As of the filing of this pleading, a document of assignment from PartsRiver to Kelora  
2 has not been made available to the public.

3           44.     Neither PartsRiver, Kelora, nor the attorneys from Manatt, Phelps & Phillips, LLP  
4 ever disclosed to eBay that any rights in the '821 patent had been assigned to Kelora.

5           45.     On October 15, 2010, PartsRiver filed a motion in the Federal Circuit to dismiss its  
6 appeal and to vacate Judge Wilken's judgment of invalidity.

7           46.     The motion that PartsRiver filed in the Federal Circuit was signed by Manatt, Phelps  
8 & Phillips, LLP.

9           47.     The motion that PartsRiver filed in the Federal Circuit did not mention Kelora.

10          48.     On October 22, 2010, eBay, along with other defendants in that case, filed a brief  
11 opposing PartsRiver's motion to vacate Judge Wilken's judgment of invalidity.

12          49.     On October 27, 2010, PartsRiver filed a reply brief in the Federal Circuit in support  
13 of its motion to dismiss the appeal and to vacate Judge Wilken's judgment of invalidity.

14          50.     The reply brief that PartsRiver filed in the Federal Circuit was signed by Manatt,  
15 Phelps & Phillips, LLP.

16          51.     The reply brief that PartsRiver filed in the Federal Circuit did not mention Kelora.

17          52.     On November 2, 2010, the USPTO issued a reexamination certificate for the '821  
18 patent reflecting: the allowed amendment to claim 1, the confirmation of unamended dependent  
19 claim 2, and the allowed new claim 9.

20          53.     The reexamination certificate lists PartsRiver as the assignee.

21          54.     On information and belief, PartsRiver contends that the scope of reexamined claims 1  
22 and 2 of the '821 patent is legally identical to that of originally issued claims 1 and 2 of the '821  
23 patent.

24          55.     On information and belief, Kelora likewise contends that the scope of reexamined  
25 claims 1 and 2 of the '821 patent is legally identical to that of originally issued claims 1 and 2 of the  
26 '821 patent.

27          56.     On November 8, 2010, Kelora filed a civil action in the Western District of  
28 Wisconsin (No. 3:10-cv-683-SLC) alleging that the following companies infringe the '821 patent: